

CAPT. WALTER C. WOLF

JULY 1, 1952.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. FINE, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany H. R. 5541]

The Committee on the Judiciary, to whom was referred the bill (H. R. 5541) for the relief of Capt. Walter C. Wolf, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

The purpose of the proposed legislation is to relieve Capt. Walter C. Wolf of all liability to pay to the United States the sum of \$800 which sum represents an amount which the Comptroller General has ruled was erroneously paid to Captain Wolf as enlistment allowance in connection with his reenlistment in the United States Army on July 25, 1949.

STATEMENT OF FACTS

It appears from the record that Captain Wolf enlisted in the United States Army on October 6, 1917; that he was promoted to technical sergeant during World War I. He reenlisted June 3, 1921 for a period of 3 years. He continued to reenlist every 3 years thereafter, including the period from June 3, 1939, to June 3, 1942. He was promoted to master sergeant on October 1, 1936, and held that grade until April 4, 1942, when he was commissioned a first lieutenant. He was promoted to captain on October 22, 1942, and thereafter served in that grade until July 23, 1949, when he was relieved from active duty. At the time he was relieved from active military duty he had completed over 31 years active military service in the United States Army. On July 25, 1949, he reenlisted in the Army as a master sergeant for a period of 3 years. On July 28, 1949, he was paid an enlistment allowance in the amount of \$800 in accordance with the provisions of section 10 of the Pay Readjustment Act of 1942, approved June 16, 1942 (56 Stat. 364), as amended by the act of October

6, 1945 (59 Stat. 541). On the same date he filed an application for retirement from the Army by reason of having completed more than 30 years active military service. He was duly retired from the Army on August 31, 1949, with the rank of captain, the highest grade held by him during World War II.

Under statutory provisions Captain Wolf was entitled to the reenlistment pay even though he did remain in the Army but a short period, and although the Comptroller General contended that he did not reenlist in good faith, the committee felt this had nothing to do with his entitlement to reenlistment allowances.

Therefore, it is the opinion of the committee that he should be relieved of the liability to refund this \$800.

DEPARTMENT OF THE ARMY,
Washington 25, D. C., March 20, 1952.

Hon. EMANUEL CELLER,
Chairman, Committee on the Judiciary,
House of Representatives.

DEAR MR. CELLER: The Department of the Army is opposed to the enactment of H. R. 5541, Eighty-second Congress, a bill for the relief of Capt. Walter C. Wolf.

This bill provides as follows:

"That Captain Walter C. Wolf, United States Army, retired, is hereby relieved of all liability to pay to the United States the sum of \$800. Such sum represents an amount which the Comptroller General has ruled was erroneously paid to the said Captain Walter C. Wolf as enlistment allowance in connection with his reenlistment in the United States Army on July 25, 1949. No officer or employee of the United States shall be liable to the United States by reason of having paid any part of such enlistment allowance to the said Captain Walter C. Wolf, and in the settlement of the account of any such officer or employee, full credit shall be given for any amount so paid.

"Sec. 2. The Secretary of the Treasury is authorized and directed to pay, out of any money in the Treasury not otherwise appropriated, to the said Captain Walter C. Wolf an amount equal to the aggregate of the amounts paid by him, or which have been withheld from sums otherwise due him, in complete or partial satisfaction of such claim of the United States."

The records of the Department of the Army show that Walter C. Wolf was born in Massillon, Ohio, on May 23, 1890; that he enlisted in the United States Army on October 6, 1917; and that he was promoted to technical sergeant during World War I. He reenlisted on June 3, 1921, for a period of 3 years. He continued to reenlist every 3 years thereafter, including the period from June 3, 1939, to June 3, 1942. He was promoted to master sergeant on October 1, 1936, and he held that grade until April 4, 1942, when he was commissioned a first lieutenant in the Corps of Engineers, Army of the United States. He was promoted to captain on October 22, 1942, and thereafter served in that grade until July 23, 1949, when he was relieved from active duty. At the time he was relieved from active military duty he had completed over 31 years active military service in the United States Army. On July 25, 1949, he reenlisted in the Army as a master sergeant for a period of 3 years.

On July 28, 1949, this soldier was paid an enlistment allowance in the amount of \$800 in accordance with the provisions of section 10 of the Pay Readjustment Act of 1942, approved June 16, 1942 (56 Stat. 364), as amended by the act of October 6, 1945 (59 Stat. 541). On the same date he filed an application for retirement from the Army by reason of having completed more than 30 years active military service. He was duly retired from the Army on August 31, 1949, with the rank of captain, the highest grade held by him during World War II.

By notice of exception, dated December 26, 1950, the Comptroller General of the United States disapproved the account of the Army disbursing officer who had paid to Master Sergeant Wolf on July 28, 1949, the sum of \$800 as an enlistment allowance. This notice of exception reads as follows:

"Credit for \$800 paid to Walter C. Wolf, RA-1955931, master sergeant will be withheld or a charge will be raised in your next statement of settlement for the reason stated below unless a satisfactory explanation is promptly made or the amount deposited:

"Credit of reenlistment allowance.

"Retirement of enlisted man on August 31, 1949, following enlistment on July 25, 1949, raises the presumption that the enlistment was entered into without the intent or expectation of serving on extended active duty."

Thereafter on July 18, 1951, the Washington Finance Office, United States Army, Washington, D. C., wrote Captain Wolf as follows:

"1. This office is in receipt of a notice of exception from the General Accounting Office forwarded through the Military Pay Division of Army Finance Center, St. Louis, Mo., in which it is shown that your enlistment on July 25, 1949, raised the presumption that such enlistment was entered into without the intent or expectation of serving on extended active duty and, therefore, you are not entitled to the \$800 paid in connection with the reenlistment.

"2. In view of the fact that this overpayment constituted an indebtedness to the United States Government, it is requested that your check or money order in the amount of \$800, drawn payable to the Treasurer of the United States, be forwarded to this office at your earliest convenience. In the event you are unable to make full refund of the indebtedness, it is suggested that you advise this office, by letter, outlining your financial ability to make payment on the indebtedness and whether you wish deductions to be made from your retired pay. In this connection, you are advised that the Department of the Army Regulations require that an indebtedness be liquidated within a period of 1 year.

"3. Retired pay for the month of July 1951 will be held in this office pending a reply to this communication."

On October 3, 1951, Captain Wolf wrote a letter to the Washington Finance Office which reads as follows:

"It is requested that the indebtedness of \$800 in my case be liquidated by collection from my retired pay at the rate of \$70 per month for 11 months and \$30 for the twelfth and final month.

"In this connection, you are informed that I am seeking the passage of legislation to relieve me of said indebtedness."

In accordance with the request of Captain Wolf deductions of \$70 per month from his retired pay were commenced in October 1951 and will be concluded in September 1952.

The Army medical record of Captain Wolf shows that on July 14, 1949, he went on sick call at the general dispensary at Fort Myer, Va., because of difficulty in hearing, and was sent to the ear, nose, and throat clinic at Walter Reed Army Hospital where he was examined by Col. V. J. Erkenbeck, Medical Corps, United States Army. In his report of his examination of Captain Wolf, dated July 14, 1949, Colonel Erkenbeck stated in part as follows:

"Patient states he has about 31 years' service and is going to retire in the near future."

This statement made by Captain Wolf 9 days before he was relieved from active duty as a captain in the Army, and 11 days prior to his final enlistment as a master sergeant, coupled with the fact that he applied for retirement on July 28, 1949, the same day that he was paid the enlistment allowance of \$800, and only 3 days after his final enlistment on July 25, 1949, indicate quite clearly that such enlistment was entered into by the claimant without the intention or expectation of serving on extended active duty but only for the purpose of collecting such enlistment allowance.

In a similar case decided by the Comptroller General on April 8, 1946 (25 Comp. Gen. 700, 703-704), it was held that an enlisted man who was eligible for retirement, but who reenlisted, and promptly thereafter submitted his application for retirement, was not entitled to be paid enlistment allowance under the Pay Readjustment Act of 1942, supra, as amended. The Comptroller General said in pertinent part as follows:

"The current enlistment allowance statute, like that considered in the decision of February 21, 1921, merely requires that the enlisted man be honorably discharged and reenlist within 3 months from the date of discharge in order to be entitled to payment of the reenlistment allowance. While a literal application of the statute might be viewed as permitting payment of an enlistment allowance under conditions such as those appearing in the present case, it is a settled rule of statutory interpretation that laws are to be given a sensible construction, and a literal application of the statute which would lead to absurd consequences is to be avoided whenever a reasonable application can be given to it. *Beach v. United States* (144 F. 2d 533); *Peters v. Felber* (152 P. 2d 42); *Russell v. Lund* (39 A. 2d 337); *Lambury v. Yates* (148 F. 2d 137); also that the literal meaning of a statute need not be followed if so doing would achieve a result contrary to its evident purpose and legislative intent. *United States v. American Trucking Association, Inc.* (310 U. S. 534); *United States v. Katz* (271 U. S. 354).

"To view section 10 of the Pay Readjustment Act of 1942, as amended, as authorizing payment of an enlistment allowance in a case where a person merely complies with the formality of entering into a contract of enlistment when he flagrantly had no intention of serving under such contract and being entitled as a matter of right to retirement, cannot be required to serve under such contract, not only would be repugnant to the evident legislative intent and purpose of the statute but would result in an absurdity. Manifestly, the purpose of authorizing the payment of an enlistment allowance upon reenlistment was to induce qualified and experienced military and naval personnel to obligate themselves to continue to serve in the active military and naval forces. While the literal requirement of the statute is met when the man actually reenlists, I believe that it reasonably may be concluded that the statute also contemplates that the enlistment or reenlistment be entered into in good faith, that is, at least with the intention and expectation of actually serving thereunder."

In the light of the facts in this case and of the authorities herein cited there is no legal or equitable basis for the granting of the relief proposed by H. R. 5541. Furthermore, the enactment of this bill would constitute discriminatory legislation in that it would grant to this claimant a special benefit not granted by general law to other claimants in like circumstances, and there are no facts or circumstances in this case that would warrant singling out this claimant for such preferential treatment. The Department of the Army, therefore, is obliged to recommend that this bill be not favorably considered by the Congress.

The Bureau of the Budget advises that there is no objection to the submission of this report.

Sincerely yours,

FRANK PACE, Jr.,
Secretary of the Army.

COMPTROLLER GENERAL OF THE UNITED STATES,
Washington 25, D. C., October 26, 1951:

HON. EMANUEL CELLER,
Chairman, Committee on the Judiciary,
House of Representatives

MY DEAR MR. CHAIRMAN: Reference is made to your letter of October 2, 1951, acknowledged October 4, 1951, enclosing copies of H. R. 5541, Eighty-second Congress, entitled "A bill for the relief of Capt. Walter C. Wolf," and requesting the opinion of this Office as to the merits of said bill.

The bill would relieve Capt. Walter C. Wolf, United States Army, retired, of all liability to refund to the United States the sum of \$800 erroneously paid to him as an enlistment allowance upon his reenlistment of July 25, 1949, and it would authorize the Secretary of the Treasury to pay to Captain Wolf "an amount equal to the aggregate of the amounts paid by him, or which have been withheld from sums otherwise due him, in complete or partial satisfaction" of his indebtedness to the United States by reason of the payment of the said enlistment allowance.

It appears that Walter C. Wolf reenlisted as master sergeant, Regular Army, at Fort Myer, Va., on July 25, 1949; that on July 28, 1949, he applied for retirement by reason of 30 years' service; that on July 29, 1949, he was paid a reenlistment allowance of \$800 (voucher 730, July 1949 accounts of First Lt. M. A. Elias, Finance Department); that upon audit of said voucher an exception to said payment was raised in the disbursing officer's accounts, and that Captain Wolf agreed to checkage of his retirement pay to effect refund of said amount.

Section 10 of the Pay Readjustment Act of 1942 (56 Stat. 363), as amended by section 8 of the act of September 7, 1944 (58 Stat. 730), and by section 8 of the Armed Forces Voluntary Recruitment Act of 1945 (59 Stat. 541), provided, *inter alia*, for the payment of an enlistment allowance to every honorably discharged enlisted man who enlisted or reenlisted in the Regular Military Establishment within 3 months from the date of his discharge. However, the manifest purpose of such legislation was to induce qualified and experienced personnel to obligate themselves to continue to serve in the active military service for extended periods and it seems reasonably apparent that the said statute contemplated that the enlistment be entered into in good faith with the intention and expectation of actually serving thereunder. In such connection see decision of this Office dated April 8, 1946 (25 Comp. Gen. 700), copy enclosed. See, also, decision of the Comptroller of the Treasury dated February 21, 1921 (27 Comp. Dec. 747), and compare the proviso in section 207 (a) of the Career Compensation Act of 1949 (63 Stat. 811), to the effect that the reenlistment bonus to be paid in the

case of a person reenlisting for a period which would extend the length of his active Federal service beyond 30 years shall be computed as if said reenlistment were for the minimum number of years necessary to permit such person to complete 30 years' active Federal service.

Since it appears that Captain Wolf reenlisted for the purpose of serving only a very short time pending issuance of orders for his retirement, and that he had completed approximately 30 years' service at the time of his reenlistment of July 25, 1949, it does not appear that the enactment of the proposed legislation would be consistent with the decisions of the accounting officers or with the current general legislation on the subject of reenlistment bonuses and, accordingly, this Office does not recommend favorable action on such proposed legislation.

Sincerely yours,

LINDSAY WARREN,
Comptroller General of the United States.

Enclosure.

FEBRUARY 16, 1952.

HON. HOWARD W. SMITH,
Member of Congress, Washington, D. C.

DEAR SIR: I am writing you regarding H. R. 5541 for my relief.

The following are my reasons why I feel that I am entitled to retain the \$800 paid me as reenlistment allowance by the United States Army Finance Department, July 29, 1949:

At the time of payment, the finance officer assured me that under existing regulations I was entitled to the reenlistment allowance. These regulations authorized the payment of a bonus of \$50 for each year of prior enlisted, or commissioned, service from the date of the receipt of the last previous reenlistment allowance providing enlisted, or commissioned, service was continuous. Continuous was interpreted as not over a lapse of 90 days between separations.

I later learned that Army Regulations No. 35-2420, dated 18 December 1945, and Changes 3, dated 14 August 1947, entitled "Finance Department, Pay of Enlisted Men, Enlisted Allowance," authorized payment of the reenlistment allowance as stated above.

I was discharged from my commission as captain, July 23, 1949, and reenlisted July 25, 1949. My Army service was continuous from October 6, 1917.

The last previous reenlistment allowance received by me was June 3, 1933. Therefore, as prescribed in the above cited Army Regulations, I was authorized the allowance of \$50 per year for 16 years, totaling \$800.

The above cited regulations make no reference to the length of service required on the current enlistment to entitle the enlistee to receive and retain the enlistment allowance.

The discharge from my commission was necessary inasmuch as I was approaching my sixtieth birthday. The purpose of reenlistment was to become eligible for retirement.

At the time of transfer to the retired list, August 31, 1949, I had served continuously, in the United States Army, for 31 years, 10 months and 24 days.

Retirement for an enlisted man constitutes a transfer from active to inactive duty, and is not a discharge from the Army.

Thanking you for your efforts in my behalf, and with kindest regards, I remain.

Sincerely yours,

WALTER C. WOLF.

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